

**Federal Defenders  
OF NEW YORK, INC.**

Southern District  
52 Duane Street -10th Floor, New York, NY 10007  
Tel: (212) 417-8700 Fax: (212) 571-0392

*David E. Patton  
Executive Director  
and Attorney-in-Chief*

*Southern District of New York  
Jennifer L. Brown  
Attorney-in-Charge*

November 17, 2020

By ECF

Honorable Katherine Polk Failla  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007

**MEMO ENDORSED**

Re: United States v. Michael Barreto, 19 Cr. 909 (KPF)

Dear Judge Failla:

I write to request a 90-day adjournment of the motions schedule and trial date in the above-captioned case. The Government does not consent to the adjournment I request but has indicated that it would consent to a short adjournment of up to ten days of the motions schedule only. This is my second request for an adjournment in this case, the Court having granted my March 9, 2020 request to adjourn a status conference. This is the first request by any party to adjourn the motions schedule and trial date in this matter.

On September 8, 2020, the Court scheduled this case for trial on February 22, 2021 and set a schedule requiring submission of defense motions by November 23, 2020, Government opposition papers by December 11, 2020, and defense reply papers by December 23, 2020, with a hearing to take place on January 7, 2021.

Unfortunately, the ongoing COVID-19 pandemic has placed significant roadblocks in the way of my efforts to prepare motions and negotiate with the Government on Mr. Barreto's behalf. Discovery in this case includes more than 4,200 pages of documents, records, and photographs—the last 184 pages of which were produced last night—along with more than 75 jail calls and several recorded statements. In addition to the usual hardship of reviewing discovery with an incarcerated client, Mr. Barreto and I have been limited in our ability to meaningfully review together during the pandemic. In addition, I have been exploring the possibility of having Mr. Barreto evaluated by a neuropsychologist or other expert, both to assist in a possible suppression motion and to facilitate our efforts to resolve this case with the Government by way of a pretrial disposition. Those efforts have also been delayed by the constraints imposed by the pandemic. The possibility of an expert evaluation grew only more elusive today, when the Metropolitan Detention

Center (MDC), where Mr. Barreto is incarcerated, apparently announced another shutdown of social and legal visitation.

Meanwhile, it is my understanding that a committee of Southern District judges is convening imminently to discuss the scheduling of jury trials during the first quarter of 2021. I would not wish for the Court to allot one of those early 2021 trial dates—however tenuous they may be—to Mr. Barreto's case when the interests of justice would be better served by the Court providing counsel with additional time to prepare and work towards a pretrial disposition.

Respectfully submitted,

/s/ Ariel Werner  
Ariel Werner  
Assistant Federal Defender  
212.417.8770

cc: Kedar Bhatia, Assistant U.S. Attorney

The Court is in receipt of Defendant's counsel's above letter. The Court hereby ORDERS a conference to discuss the scheduling issues raised by the letter today, November 18, 2020, at 12:00 p.m. The conference will take place by telephone, and dial-in instructions are as follows: At 12:00 p.m. the parties will dial (888) 363-4749 and enter access code 5123533. Please note that the hearing will not be available prior to 12:00 p.m. Given the time-sensitivity of the scheduling issues raised in the above letter, counsel for Defendant has waived Defendant's presence at the conference in an e-mail communication sent to the Court the morning of November 18, 2020.

Dated: November 18, 2020  
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE